

Matthew Cruz F-03927
Mule Creek State Prison
P.O. Box 409060
Ione, CA 95640

In Pro Se

FILED
08 AUG 21 PM 1:37
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MATTHEW CRUZ,
Petitioner,

V.

RICHARD SUBIA, (Warden),
Respondent.

CV 08-2793 (PR)

REQUEST FOR EMERGENCY INJUNCTIVE
RELIEF ORDER PROHIBITING
TRANSFER OF CUSTODY OF STATE
PRISONER WITH PENDING REVIEW
OF FEDERAL HABEAS CORPUS
PROCEEDINGS PURSUANT TO FRAP
RULE 23(A).

Petitioner in the above entitled cause of action currently pending review before this Honorable Court, Matthew Cruz, hereby seeks an order of this Court restraining the California Department of Corrections and Rehabilitation from transferring his custody to a privately operated prison facility in Red Rock Arizona.

This request is based upon this motion, the appended Memorandum of Authorities and declaration of Matthew Cruz. This motion is grounded upon rule 23(a) of the Federal Rules of Appellate Procedures.

Dated: 8-19-08

Respectfully submitted by:

Matthew Cruz
Mathew Cruz, Petitioner

1 MEMORANDUM OF ARGUMENT AND AUTHORITIES

2
3 Petitioner relies upon the authority of rule 23(a) of the
4 Federal Rules of Appellate Procedures which states:

5 (a) **Transfer of Custody Pending Review.**

6 Pending review of a decision in a habeas
7 corpus proceeding commenced before a court,
8 justice, or judge of the United States for
9 the release of a prisoner, the person having
10 custody of the prisoner must not transfer
11 custody to another unless a transfer is
12 directed in accordance with this rule. When,
13 upon application, a custodian shows the
14 need for a transfer, the court, justice,
15 or judge rendering the decision under review
16 may authorize the transfer and substitute
17 the successor custodian as a party.

18 **Facts:**

19 Petitioner is presently confined at Mule Creek State
20 Prison located in Ione, California in the custody of the
21 California Department of Corrections and Rehabilitation. Said
22 custody stems from a criminal judgment in the Superior Court
23 of the State of California, in and for the County of Sonoma
24 located in Santa Rosa, California. Petitioner received a term
25 of imprisonment of 13 years and 8 months on November 11, 2004.

26 After exhausting his state remedies of claims constitut-
27 ing sentencing errors, petitioner filed a petition for writ
28 of habeas corpus before this Honorable court on June 4, 2008
29 in Case No. CV 08-2793 (PR). The matter is still pending review.

30 During the week of July 28, 2008 petitioner was taken
31 before an institutional classification review committee for
32 consideration for transfer to a privately operated prison

1 located in Red Rock, Arizona. At this time petitioner informed
2 the committee that he had a petition for writ of habeas
3 corpus pending before this court and referred the committee
4 to rule 23(a) of the Federal Rules of Appellate Procedures.
5 Petitioner explained that for this, and several personal reasons
6 he did not wish to be transferred. The committee made note
7 of these facts but did not inform petitioner of any determinat-
8 ion. On August 11, Petitioner was directed to an interview
9 with a nurse for medical review pending transfer. Petitioner
10 was informed that he, and several other inmates, would be
11 transferring on or about September 4, 2008. He was also informed
12 that September 4th was a projected date and that it could be
13 sooner.

14 **PRAYER FOR RELIEF**

15 Petitioner respectfully request this Honorable Court to
16 grant the requested relief by issuing it's order to the relevant
17 parties prohibiting them from transferring petitioner while
18 the above matters are pending and through any appeals taken,
19 if necessary.

20 Dated: 8-19-08

Respectfully submitted:

21 Matthew Cruz
22 Matthew Cruz, Petitioner.
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24
25
26
27

Appellate

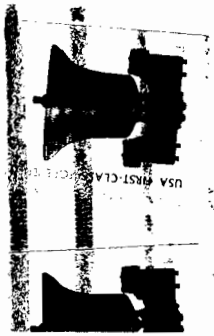
Appellate Case

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Legal Mail

United States District

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San Francisco, Ca.

Urgent. Emergency Order

8/19/08

James